

ctw/k
ORIGINAL

U.S. DISTRICT COURT
NORTHERN DIST. OF TEXAS
FORT WORTH DIVISION

2012 DEC 17 PM 3:55

JUDGE OF COURT

Roderick Dion Norman

Plaintiff

-v-

TATE & KIRLIN ASSOCIATES

Defendant

CASE#

4-12CV-911 A

Judge _____

ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NATURE OF ACTION

1. This is an action brought by a Plaintiff individually, for Defendant's violation of the Fair Debt Collection Practices Act 15 U.S.C. § 1692, et seq. (the "FDCPA"), the Texas Debt Collection Practices Act, Chapter 392 (the "TDCPA") and the Texas Business and Commerce Code, Subchapter E. Chapter 17, (the "DTPA") which prohibits debt collectors from engaging in abusive, deceptive and unfair practices. It also includes actions for damages for Defendant's violations of the Telephone Consumer Protection Act 47 U.S.C. § 227 (the "TCPA"), / Texas Business Code Ann. § 305.053.
2. Plaintiff seeks to recover monetary damages for Defendant's violations of the FDCPA, TDCPA, DTPA, and TCPA.

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 15 U.S.C. §1692k9(d), 28 U.S.C. § 1331.
4. The occurrences which give rise to this action occurred in Tarrant County, Texas and Plaintiff resides in Tarrant County. Venue is proper in the Northern District of Texas Fort Worth Division.

PARTIES

5. Plaintiff in this lawsuit is Roderick Dion Norman (“Plaintiff”), a natural person, who resides in Tarrant County, Texas.
6. Plaintiff is a consumer as defined by the FDCPA, 15 U.S.C § 1692a(3), the Texas Business and Commerce Code section § 17.50(a)(1), the Texas Finance Code § 392.001(1).
7. Defendant TATE & KIRLIN ASSOCIATES (“Defendant”) is an entity who at all relevant times was engaged, by the use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5) and by Tex. Fin. Code Ann. § 392.001(6).
8. Upon information and belief Defendant TATE & KIRLIN ASSOCIATES has offices at 2810 Southhampton Rd, Philadelphia, PA 19154-1207 and authorized to do business in Texas.
9. Defendant is a “debt collector” as defined by 15 U.S. C. 1692a(6) and by Tex. Fin. Code Ann. § 392.001(2).

FACTUAL ALLEGATIONS

10. Plaintiff received a collection notice from the Defendant dated October 18, 2012 stating that Defendant was a debt collector attempting to collect an alleged debt regarding a (unsecured) GMAC account with alleged balance on said account of \$8,971.03
11. Plaintiff sent a timely response within 30 days to Defendant on October 23, 2012 disputing and demanding validation of the alleged debt. At no time did Plaintiff receive a response to his demand for validation. Defendant's failure to provide proper validation within five (5) days of Plaintiff's communication to validate alleged debt violates 15 U.S.C. § 1692g(a), the TDCPA, as well as the Texas Business Code Ann. § 305.053.
12. Beginning September 14, 2012 at 9:35 AM until October 29, 2012 at 12:05 PM Plaintiff received ten (10) telephone calls to Plaintiff's home telephone from Defendant showing a caller ID of 267-295-9113 when Defendant had no prior consent from the Plaintiff to do so. Said telephone number is known to be a telephone number used by the Defendant in debt collection calls to consumers, using an automated telephone dialing system. The calls were made in violation of 15 U.S.C. § 1692d, § 1692d(5), TDCPA, the Texas Business Code Ann. § 305.053 and were a deceptive practice and meant to harass the Plaintiff.
13. On December 7, 2012 Plaintiff sent a "Notice of Pending Lawsuit" to the Defendant and they chose not to settle to avoid litigation regarding their violations of the FDCPA, TDCPA, DTPA, TCPA and the Tex. Business and Finance Code Annotated.

14. On December 13, 2012 Plaintiff received a telephone call from a representative of the Defendant, who was not the Defendant's attorney according to the representative.

The Defendant's representative spoke adamantly that the Defendant had not violated any statutes referenced in the Plaintiff's original complaint.

15. All violations complained of herein occurred within the statute of limitations of the applicable statutes, both state and federal.

COUNT I
VIOLATIONS OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)
BY DEFENDANT TATE & KIRLIN ASSOCIATES

16. Plaintiff alleges and re-alleges each and every allegation stated above.

17. Defendant's aforementioned conduct violated the FDCPA.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the FDCPA.
- b) Awarding Plaintiff statutory damages, pursuant to 1692k, in the amount of \$1,000;
- c) Award Plaintiff any attorney's fees and costs incurred in this action;
- d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- e) Awarding such other and further relief as the Court may deem just and proper.

U.S.C.

COUNT II

VIOLATIONS OF THE TDCPA

18. Plaintiff repeats and re-alleges each and every allegation stated above.

19. Defendant TATE & KIRLIN ASSOCIATES violated the Texas Debt Collection Practices Act in one or more of following ways:

- a) Using false representation or deceptive means to collect a debt or obtain information concerning a consumer, including Tex Fin. Code § 392.304(a)(19).

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging the Defendant violated the TDCPA;
- b) Awarding Plaintiff statutory damages pursuant to the TDCPA;
- c) Awarding Plaintiff any attorney's fees and costs incurred in this action;
- d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- e) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATION OF THE DTPA

19. Plaintiff repeats and re-alleges each and every allegation by reference herein all prior paragraphs above.

20. A violation of the Texas Debt Collection Practices Act is a deceptive trade practice under the Texas Deceptive Trade Practices Act, and is actionable under the Texas Deceptive Trade Practices Act. Tex. Fin. Code Ann. § 392.404(a).

21. Defendant violated Tex. Bus. Com. Code, Chapter 17, Subchapter E.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- a) Adjudging that Defendant violated the Texas Deceptive Trade Practices Act.
Tex. Bus. Com. Code, Chapter 17, Subchapter E;
- b) Awarding Plaintiff actual damages for time spent defending against
Defendant's deceptive activities.
- c) Awarding Plaintiff three times actual damages, pursuant to Tex. Bus. Com.
Code § 17.50(h);
- d) Awarding Plaintiff any attorney's fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be
allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT IV

VIOLATIONS OF THE TCPA/TEXAS BUSINESS CODE ANN. § 305.053

22. Plaintiff repeats and re-alleges each and every allegation by reference herein all prior paragraphs above.

23. Defendant's aforementioned conduct violated the TCPA.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the TCPA/Texas Business Code Ann. § 305.053.
- b) Awarding Plaintiff statutory damages, pursuant to Texas Business Code Ann. § 305.053 in the amount of \$500 for the first call made to Plaintiff and \$1,500 per call for ten (9) successive calls made to Plaintiff which were willful and knowing violations of the code.
- c) Awarding Plaintiff any attorney's fees and costs incurred in this action;

- d) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- e) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Respectfully submitted this 17th day of December, 2012



Roderick Dion Norman
6268 Stardust Dr. S.
Watauga, TX 76148
(469) 774-4528

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Roderick Dion Norman

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

TATE & KIRLIN ASSOCIATES

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF	
	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp'l. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692, 47 USC 227Brief description of cause:
Violations of FDCPA, and TCPA**VI. CAUSE OF ACTION**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

17,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VII. REQUESTED IN COMPLAINT:**

17,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE